

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1002

Introduced by Redfield, 12

Read first time January 5, 2000

Committee: Transportation

A BILL

1 FOR AN ACT relating to electronic mail; to amend section 28-1310,
2 Reissue Revised Statutes of Nebraska; to prohibit acts
3 relating to unsolicited electronic mail and advertising;
4 to provide for civil actions and penalties; to harmonize
5 provisions; to provide severability; and to repeal the
6 original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. For purposes of sections 1 to 5 of this act:

2 (1) Electronic mail means the transmission of information
3 by use of a computer or other electronic means to a person
4 identified by a unique address;

5 (2) Electronic mail advertisement means any electronic
6 mail, the principal purpose of which is to promote, directly or
7 indirectly, the sale or other distribution of goods or services to
8 the recipient;

9 (3) Electronic mail service provider means any person
10 that provides users the ability to send or receive electronic mail
11 through equipment located in this state and who is an intermediary
12 in sending or receiving electronic mail;

13 (4) Established business relationship means a prior or
14 existing relationship formed by a voluntary two-way communication,
15 with or without an exchange of consideration, on the basis of an
16 inquiry, application, purchase, or transaction by a person
17 regarding products or services offered by another person, which
18 relationship has not been previously terminated by either party. A
19 request made at any time by a recipient to no longer receive
20 electronic mail from the sender shall constitute termination of the
21 relationship for purposes of sections 1 to 5 of this act;

22 (5) Initiate refers to the action by the initial sender
23 of the electronic mail. The term does not refer to the actions of
24 any intervening electronic mail service provider that may handle or
25 retransmit the electronic mail in the normal course of providing
26 its service;

27 (6) Pattern or practice means two or more separate and
28 distinct violations during a period of one year or less;

1 (7) Source means the information included in or
2 associated with an electronic mail that identifies the sender or
3 point of initiation of the electronic mail; and

4 (8) Unsolicited electronic mail advertisement means any
5 electronic mail advertisement that is:

6 (A) Addressed to a recipient with whom the initiator does
7 not have a personal relationship or an established business
8 relationship; and

9 (B) Not sent at the request of or with the express
10 consent of the recipient.

11 Sec. 2. (1) A person or government agency within this
12 state shall not use a computer or other electronic device to
13 initiate (a) an unsolicited electronic mail advertisement or (b)
14 any electronic mail for which the source has been falsified,
15 concealed, or intentionally misidentified, to any electronic mail
16 address.

17 (2) A person or government agency shall not use a
18 computer or other electronic device to initiate (a) an unsolicited
19 electronic mail advertisement or (b) any electronic mail for which
20 the source has been falsified, concealed, or intentionally
21 misidentified, to any electronic mail address within this state.

22 Sec. 3. A recipient of any electronic mail violating
23 section 2 of this act may bring an action in the district court to:

24 (1) Enjoin any violation of this act; and

25 (2) Recover damages in an amount equal to the loss
26 suffered by the recipient by reason of the violation, plus
27 attorney's fees and costs. The damages recoverable include the
28 economic loss suffered by the recipient as a result of a software

1 virus or program attached to or included within the electronic
2 mail.

3 Sec. 4. The Attorney General may bring an action in the
4 district court against any person or government agency engaged in a
5 pattern or practice of violating section 2 of this act and may
6 recover a civil penalty of not more than one thousand dollars per
7 violation.

8 Sec. 5. An electronic mail service provider that
9 transmits or retransmits an unsolicited electronic mail
10 advertisement is not liable for any damages under sections 3 and 4
11 of this act unless the provider:

12 (1) Was also the party responsible for initiating the
13 unsolicited electronic mail advertisement;

14 (2) Falsified, concealed, or intentionally misidentified
15 the source of advertisement; or

16 (3) Used its established business relationship to
17 transmit the unsolicited electronic mail advertisement.

18 Sec. 6. Section 28-1310, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-1310. (1) A person commits the offense of
21 intimidation by ~~phone call~~ telephone, facsimile, or electronic mail
22 if with intent to terrify, intimidate, threaten, harass, annoy, or
23 offend, he or she:

24 (a) Telephones or sends a facsimile or electronic mail to
25 another anonymously, whether or not conversation ensues, and
26 disturbs the peace, quiet, and right of privacy of any person at
27 the place where the calls, facsimile, or electronic mail are
28 received; or

1 (b) Telephones or sends a facsimile or electronic mail to
2 another and uses indecent, lewd, lascivious, or obscene language or
3 suggests any indecent, lewd, or lascivious act; or

4 (c) Telephones or sends a facsimile or electronic mail to
5 another and threatens to inflict injury to any person or to the
6 property of any person; or

7 (d) Intentionally fails to disengage the telephone
8 connection; or

9 (e) Telephones or sends a facsimile or electronic mail to
10 another and attempts to extort money or other thing of value from
11 any person.

12 (2) The use of indecent, lewd, or obscene language or
13 images or the making of a threat or lewd suggestion shall be prima
14 facie evidence of intent to terrify, intimidate, threaten, harass,
15 annoy, or offend.

16 (3) The offense shall be deemed to have been committed
17 either at the place where the call, facsimile, or electronic mail
18 was ~~made~~ initiated or where it was received.

19 (4) Intimidation by ~~phone call~~ telephone, facsimile, or
20 electronic mail is a Class III misdemeanor.

21 Sec. 7. If any section in this act or any part of any
22 section is declared invalid or unconstitutional, the declaration
23 shall not affect the validity or constitutionality of the remaining
24 portions.

25 Sec. 8. Original section 28-1310, Reissue Revised
26 Statutes of Nebraska, is repealed.